

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SEAN F. HIGGINS)	
Claimant)	
VS.)	
)	
COMBO, INC.)	Docket No. 154,301
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent appealed the February 20, 1998, Award entered by Administrative Law Judge Julie A. N. Sample. The Appeals Board heard oral argument by telephone conference on September 2, 1998.

APPEARANCES

The claimant settled his claim against the respondent and its insurance carrier on August 27, 1993, and did not appear. The respondent and its insurance carrier appeared by their attorney, James K. Blickhan of Overland Park, Kansas. The Kansas Workers Compensation Fund (Fund) appeared by its attorney, Bruce D. Mayfield of Overland Park, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Administrative Law Judge's Award.

ISSUES

The Administrative Law Judge found respondent had failed to prove it had knowledge that claimant was a handicapped employee before the November 7, 1990, accident. Respondent, however, contends that following claimant's November 1989 injury to both of his shoulders, he continued to have ongoing problems with his shoulders as he continued to work for the respondent. The respondent argues those continued problems constituted a handicap in claimant retaining and obtaining employment. The respondent further contends the record proves claimant's November 7, 1990, injury would not have occurred "but for" the preexisting injury and disability. Therefore, the respondent contends the Fund should be liable for 100 percent of the August 27, 1993, settlement between claimant and the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The Appeals Board agrees with the Administrative Law Judge that the record supports the conclusion, that claimant returned to his regular work after the November 1989 accident with no work restrictions or permanent functional impairment. Although respondent had knowledge of claimant's November 1989 injury, the mere knowledge of an earlier injury is not sufficient to impose liability on the Fund. See Hinton v. S. S. Kresge Co., 3 Kan. App. 2d 29, 33, 592 P.2d 471 (1978), *rev. denied* 225 Kan. 844 (1979). Thus, the Appeals Board affirms the Administrative Law Judge's Award.

The Appeals Board also finds that the Administrative Law Judge's findings of fact and conclusions of law set out in her Award are accurate and supported by the record. The Appeals Board concludes there is no reason to repeat those findings and conclusions in this order. Therefore, those findings and conclusions are adopted by the Appeals Board as its own.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 20, 1998, Award of Administrative Law Judge Julie A. N. Sample, should be, and is hereby, affirmed.

The Appeals Board approves and adopts all remaining orders contained in the Award.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James K. Blickhan, Overland Park, KS
Bruce D. Mayfield, Overland Park, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director